



July 27, 2000

Mr. Acie Craig McAda
City Attorney
City of Kenedy
P.O. Box 311734
New Braunfels, Texas 78131

OR2000-2845 —

Dear Mr. McAda:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 137460.

The Municipal Court Judge for the City of Kenedy (the "city") received a request for information from a named individual who is evidently appearing *pro se* in a pending matter before the court. The request states:

I recently received a citation. I have entered a plea of not guilty and requested a trial. I believe that each item listed below will contain information that will exonerate me. I would also point out to the court that under the custody, control, possession or superior right of rule of discovery (Code of Criminal Procedure), it is the prosecutor's responsibility to make the items available. So that I can complete the preparations for my defense please provide me with the following:

1. List all incentive programs for the individual issuing citations, such as rewards, quotas and/or disciplinary actions.
2. A copy of the issuing officer's personnel file.
3. A copy of the issuing officer's supervisors personnel file.

As the city attorney, you seek our decision of whether the request “may be considered a request for information” under the Act in light of section 552.0055 of the Government Code. In the alternative, you assert that some of the information that is responsive to the request is excepted from required public disclosure under section 552.117 of the Government Code. We have considered your arguments and assertions, and we have reviewed the submitted information.

Section 552.0055 of the Government Code was added to the Act by the 76th legislature, and provides as follows:

A subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under [chapter 552 of the Government Code].

Gov’t Code § 552.0055. In support of the applicability of this provision, you state:

[T]he request is made in connection with a criminal prosecution, albeit a violation of municipal ordinance. The very language of [the] request states such request is made under a rule of discovery and identifies the Code of Criminal Procedure as a source of authority.

Although neither you nor the requestor identifies any specific provision of the Code of Criminal Procedure, we believe that, under the circumstances, the request constitutes a motion for discovery submitted to the court under article 39.14 of the Code of Criminal Procedure. *See* Crim. Proc. Code art. 39.14. Accordingly, we find pursuant to section 552.0055 of the Government Code, that the request does not constitute a request for information under the Act. Therefore, the city is not required to comply with the request.

Because the Act is not implicated, we do not address the section 552.117 assertion. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

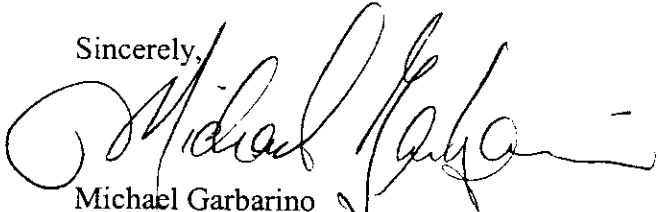
have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 137460

Encl. Submitted documents

cc: Mr. Tim Polk
6560 Old Mill Circle
Watauga, Texas 76148
(w/o enclosures)